on mutual confidence which is the reason why the law provides in Section 253 (6) that "no person can introduced a new partner into a firm without the consent of all the partners" (in the absence of any contract to the contrary).

A partner cannot by assigning his share make anyone else a partner in his stead with his co-partners; and I do not see that the law places the Official Assignee in Bankruptcy in any better or other position than any other Assignee of a partner's share.

If the partnership is not dissolved (and it requires an order of Court to do so which is apparently discretional—*vide* the word "may") the Assignee is not even entitled to an account but only to receive whatever the Bankrupt would have received in the way of distribution of profits and such like.

If there is a dissolution he has a right to sue, not as a partner, but, as an assignee of the rights of the Bankrupt in the partnership property, for an account of that property and for such a distributive share as belonged to his assignor. (*Pollock* and *Mulla*—Indian Contract Act 6th Edition p. 708).

Owing to the fact that in English law bankruptcy *ipso facto* effects dissolution the question of the position of the Official Assignee could not arise there in the form in which it has arisen in this present Suit, but that the true position of the Official Assignee in this present matter is that he is not the proper Defendant to this Suit but that the Bankrupt partner himself is, I think, clearly revealed in the English case of *Public Trustee v. Elder,*[2].

There, the Public Trustee, as Custodian of Enemy Property, had vested in him by an Order of the Board of Trade all the property, rights and interests of three German partners in the assets of a Firm 'A' with one English Partner.

The Public Trustee brought an action to wind up the partnership. The German partners were not added as plaintiffs in the action. It was held that in the absence of the German partners as parties to the action, no such relief or accounts as claimed could be ordered and the action failed. At page 272 the Judgment proceeds:—

> "I cannot accede to the contention put forward on his behalf that his position is distinguishable from that of any other assignee".

In that case the position of the Public Trustee as an Assignee by an Order under the Statute and not by the act of the partners themselves by assignment is, I think, analogous to that of the Official Assignee in Bankruptcy.

I have come therefore to the conclusion that the contention of the Defendant is right and that the proper Defendant to this Suit is the Bankrupt in person. The Official Assignee is therefore dismissed from the Suit as Defendant with costs; and I order that that Kang Boon Tuan be substituted as Defendant in this Suit.

The costs which the Plaintiff is to pay the Official Assignee he is entitled to recover from the assets of the partnership. There will be an order accordingly.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

CUSSEN, J.

July 4, 1940.

HOO KUNG HOCK v. PUBLIC PROSECUTOR.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 36 of 1940]

Common Gaming Houses—raid of a club—seizure of gaming implements and money found on persons arrested—conviction—order for confiscation of money —validity.

Seventeen persons were arrested when the Police raided a Chinese club in Kuala Lumpur. On arrest, these persons were searched and from their persons were taken various sums totalling $198.08. They were convicted under the Common Gaming Houses Enactment on a plea of guilty, and fined $5.00 each. The trial Magistrate made an order of confiscation of the moneys so found on the persons of the accused.

Held, that the Magistrate was not justified in making the order of confiscation, there being no evidence that the money seized by the Police was used for the commission of the offence of gaming.

CRIMINAL REVISION.

Cussen, J.—On the 11th February, 1940, about 3 p.m. the Police raided a Chinese Club at No. 1, Cross Lane, Kuala Lumpur, and found there, in the Club room, a number of Chinese playing dominoes for money. A number of gaming implements such as dominoes and dice, mahjong sets, were seized and also a certain quantity of money on the table and in a cash-box and locked drawer.

Seventeen persons were arrested. On arrest, these persons were searched and from their persons was taken various sums totalling $198.08.

They were all charged under the Common Gaming Houses Enactment and pleaded guilty and were fined

$5.00 each. The present Appellant is one of these men. In addition to imposing the fines the Learned Magistrate ordered that the monies found on the persons of the accused should be confiscated, namely, this sum of $198.08.

This present Appellant appeals only against the order of the Magistrate confiscating the sum of $198.08.

It is quite evident that this present Appellant is not entitled to appeal against the confiscation of all that sum but only of whatever particular amount was taken from him personally.

I have decided therefore to deal with this case in revision.

The Learned Magistrate gives as his ground for confiscating this money as follows:—

> "I made an order for the confiscation of the property, i.e. the cash amounting to $198.08 under the wide powers given to me by Section 407 of the Criminal Procedure Code, Cap. 6. I consider that under those circumstances the money must have been used for the commission of the offence of gaming in a Common Gaming House".

It seems to me that this conclusion of the Learned Magistrate is not warranted by evidence. In my opinion, the evidence does not establish that whatever sums of money these accused had in their possession, in their pockets, must have been used for the commission of the offence of gaming. If anything, the inference appears to me to be at least as strong against that conclusion.

The Learned Deputy Public Prosecutor, while not supporting this order of the Magistrate, has asked me to make an order of forfeiture under Section 16 (ii) of the Common Gaming Houses Enactment. In the circumstances of the case, I am not prepared to do this.

The order of confiscation of the sum of $198.08 is set aside and this sum of money is to be refunded to the persons from whom it was taken by the Police.

Order set aside.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J.

May 27, 1940.

PUBLIC PROSECUTOR
v.
MOHAMED ARIFF BIN OMAR.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 21 of 1940]

Evidence Enactment, Ss. 24, 29—confession—conditions of admissibility.

An employee of the Sanitary Board, Klang, was charged with criminal breach of trust in respect of money received by him for payment of land assessment and not paid over to the Sanitary Board. The Deputy Chairman of the Sanitary Board recorded in the presence of the accused a statement from the complainant and a witness, containing allegations against the accused. The official then recorded a statement from the accused. Counsel for the accused objected to the statement being tendered in evidence on the ground that it was not made voluntarily. The trial Magistrate acceded to counsel's contention and rejected the evidence.

Held, on appeal against acquittal, that the statement was not caused by any inducement or threat but was made voluntarily and that the trial Magistrate should have required further details from the Deputy Chairman in regard to the circumstances under which the statement was made, viz., what he had said to the accused (respondent) and whether in fact there had been any inducement or threat.

Case referred to:—

(1) *Queen v. Thompson,* (1893) 2 Q.B.D. 12.

MAGISTRATE'S CRIMINAL APPEAL.

Grattan-Bellew, Deputy Public Prosecutor, for Public Prosecutor (Appellant).

Rajasooriya for accused (Respondent).

Poyser, C.J.—This is an appeal by the Public Prosecutor. The respondent was charged with criminal breach of trust of the sum of $4.70, the property of the complainant Mu Eisah binti Haji Dul Hadi. The evidence was to the effect that the Respondent, a Sanitary Board employee, received this sum from the complainant for payment of land assessment, but did not pay it to the Sanitary Board.

The Magistrate found that the complainant's evidence was unreliable, and was not impressed with the other evidence. On this aspect of the case I entirely agree with the Magistrate, but the grounds of the Public Prosecutor's appeal are:—

> "The learned Magistrate was wrong in law in refusing to admit in evidence the confession made by the respondent to the fourth witness for the prosecution".

The evidence as to this alleged confession was that of the Deputy Chairman of the Sanitary Board. The following is the material part of such evidence:—

> "I am the Deputy Chairman, Sanitary Board, Klang. On 14.12.39 I received instructions from the Chairman, Sanitary Board, Klang, to investigate a complaint made by No. 1 and No. 2 witnesses. I proceeded to record a statement from Mu Eisah and No. 2 witness. The accused was present as the allegations had been made against him. The complaint was that the accused had taken money from Mu Eisah for payment of assessment and that the accused had not given a receipt. I then recorded a statement from the accused. The statement by the accused was given voluntarily in the presence of Mu Eisah and No. 2 witness".